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December 5, 2006

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: Notice of *ex parte* meeting in MB Docket No. 05-311, Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended; and MB Docket No. 06-189, Annual Assessment of Status of Competition in the Market for Delivery of Video Programming.

Dear Ms. Dortch:

On December 5, 2006, representatives of the National Multi-Housing Council ("NMHC") met with Cristina Pauze of Commissioner McDowell's office in connection with the matters identified above. The NMHC representatives were Jim Arbury, Senior Vice President of NMHC, Betsy Feigin Befus, Director of Property Operations, and Matthew C. Ames of Miller & Van Eaton, PLLC.

During the meeting, the participants discussed the reasons that NMHC believes that exclusive agreements between property owners and video service providers for access to residential owners should not be regulated by the Commission, and related issues.

**MILLER & VAN EATON, P.L.L.C.**

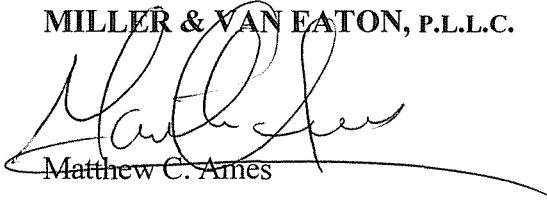
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A copy of the materials distributed at the meeting is attached.

Very truly yours,

**MILLER & VAN EATON, P.L.L.C.**

By

  
Matthew C. Ames

Attachments

cc: Cristina Pauze

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## THE NATIONAL MULTI-HOUSING COUNCIL URGES THE COMMISSION NOT TO REGULATE EXCLUSIVE ACCESS AGREEMENTS

- ***The National Multi-Housing Council (“NMHC”) urges the Commission to reject calls for regulation of exclusive access agreements between residential property owners and multichannel video providers.*** Property owners care about this issue because they benefit from having competitive alternatives to the cable multi-system operators.
- ***The underlying economic and legal principles have not changed since the Commission last addressed this issue.*** See *In the Matter of Telecommunications Services Inside Wiring*, First Order on Reconsideration and Second Report and Order, CS Docket No. 95-184, MM Docket No. 92-260, 18 FCC Rcd 1342, 1366-1370 (2003). Exclusive contracts allow competitive providers the assurance that they will be able to recover the capital costs of installing their facilities on a property within a determined period. Without exclusive contracts, larger, better financed providers can overbuild properties, perhaps offering competitive choices for a time, but in the long run allowing them to take advantage of their market position to prevent smaller providers from earning an adequate return on investment. In the end, exclusive contracts increase the prospects of competition.
- ***In considering claims of anticompetitive behavior, the Commission should examine the entire range of behavior in the market.*** NMHC’s members report instances in which they have been informed by Verizon or another local exchange carrier (“LEC”) that the LEC would not install facilities for the delivery of voice service unless the property owner also agreed to allow the LEC to provide video service. Members also report cases in which the LEC has demanded exclusive access for multiple services. In Florida, BellSouth has threatened not to install its telephone network in buildings that have exclusive contracts with cable operators, citing that state’s new carrier of last resort (“COLR”) statute. That law permits the COLR to refuse to provide voice service in a building if the property owner has entered into an exclusive contract with another provider for “voice service or voice replacement service.” BellSouth has now asked the Florida PSC to adopt a rule expanding on the terms of the statute, to include video services.
- ***Finally, the Commission does not have the authority to address the issue.*** The Notice of Proposed Rulemaking in MB Docket No. 15-311 did not raise any questions regarding the existence or effects of exclusive contracts. Thus, the NPRM did not offer interested parties proper notice of this issue and Commission action on Verizon’s request would violate the Administrative Procedure Act. See, e.g., *Reeder v. F.C.C.*, 865 F.2d 1298, 1304 (D.C. Cir. 1989); *MCI Telecommunications Corp. v. F.C.C.*, 57 F.3d 1136, 1142 (D.C. Cir. 1995). In addition, the clear purpose of Section 628 of the Cable Act was to promote the delivery of satellite programming – there has never even been a suggestion before that that provision might apply to exclusive agreements for access to a building.



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**Gaines F. Spivey**  
Area Manager – Network Services

July 19, 2006

RE: College Suites at Orpington

This letter is a follow-up to conversations you have had with Glenn Prunyi from our Engineering Group regarding BellSouth's service provisioning to the referenced project. Included in this letter is important information regarding BellSouth's requirements preparatory to our commencing work on this project. We thank you for considering BellSouth and look forward to working with your team.

Before BellSouth incurs costs to prepare the property for BellSouth service, we require an authorized representative of the developer or affiliated property owner to sign and return this letter. Once we receive the signed letter, BellSouth will commence planning and engineering activities when appropriate to serve the property. By signing this letter, you agree that:

- The developer or its affiliated property owner will grant to BellSouth, at no cost, easements for the placement of its cables and equipment within the property at mutually agreeable locations. To meet the estimated service dates of this project, easements must be granted and recorded by September 1, 2006.
- BellSouth will be provided with site plans and valid addresses for the project by September 1, 2006. The plans will include lot lines and measurements.
- To the extent required by applicable laws and rules, or as otherwise agreed upon, the developer or its affiliated property owner will provide support structures necessary for the installation of BellSouth's facilities (for example, conduits, trenches, pullboxes, equipment space, backboards, electrical power, as applicable.)
- BellSouth will not be restricted in any way from providing any service that it desires to offer at the property.
- The developer, any affiliated property owner or other affiliated party, and any homeowners or condominium association, have not entered into, and do not plan to enter into, an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement (i.e., charges for services provided to residents are collected through rent, fees, dues, or other similar mechanism), with another service provider for communications services, including any voice, data, or video service.

In addition, if (insert developer's name) or any affiliated party or homeowners or condominium association enters into an exclusive marketing agreement, exclusive service agreement, or a bulk service agreement (as defined above) with another service provider for communications services, including any voice, data, or video service, within 18 months of the date of first occupancy, (insert developer name) will be responsible to BellSouth for the then unrecovered costs associated with the engineering and installation of the initial facilities.

Please sign where indicated below and return the signed letter to me by August 4, 2006. By signing this letter, you agree that, if BellSouth proceeds with engineering and construction work and ultimately does not provide service to residents due to any of the conditions above not being met, or other conditions that limit BellSouth's ability to provide service, then you will reimburse BellSouth for the costs of such work. This cost recovery would be in addition to any other remedies available to BellSouth. You will promptly inform BellSouth if the conditions are not met or of any limiting conditions.

The person signing below must be a representative who is authorized to sign for your company and by signing below represents that he or she has that authority.

Thank you for choosing BellSouth. If you have any questions, please contact me at 407-327-0530

Sincerely,

BellSouth Telecommunications, Inc.

\_\_\_\_\_  
Gaines F. Spivey

Accepted and Agreed By:

By: \_\_\_\_\_  
Authorized Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_